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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/564,684	07/06/2006	Stephen William Murray	7101P008	2064

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BLAKELY SOKOLOFF TAYLOR & ZAFMAN LLP  
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EXAMINER
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NGUYEN, CHUONG P

ART UNIT	PAPER NUMBER
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3663

MAIL DATE	DELIVERY MODE
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07/20/2010

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/564,684	<b>Applicant(s)</b> MURRAY, STEPHEN WILLIAM	
	<b>Examiner</b> Chuong P. Nguyen	<b>Art Unit</b> 3663	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 12 May 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 and 3-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

1. Applicants' 05/12/2010 Amendment, which directly amended the abstract and specification; amended claims 1, 3, 6; cancelled claim 2; and traversed the rejection of the claims of the 10/14/2009 Office Action are acknowledged.

#### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

#### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1, 3-9 and 13-14 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Sakai et al (6,409,625).

Regarding claim 1, Sakai et al disclose in Fig 1-2, 4, 6, 9-10 a continuously variable ratio transmission assembly ("variator") (i.e. toroidal continuously variable transmission 1) comprising: a roller (i.e. power rollers 18C, 18D, 20C, 20D) which transmits drive between a

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pair of races, the roller being movable in accordance with changes in a variator ratio (Abstract; col 3, line 42 – col 4, line 36), a hydraulic actuator (i.e. speed ratio control valve 70, 70A in conjunction with pressure control valve (200, 210, 220, 40, 45, 41, 46) which applies a biasing force to the roller, at least one valve connected to the actuator through a hydraulic line to control pressure applied to the actuator and so to control the biasing force (col 4, line 37 – col 7, line 26), and an electronic control (i.e. control unit 300) which determines the required biasing force and sets the valve accordingly, wherein the electronic control serves to determine a rate of flow in the hydraulic line to determine a consequent pressure change between the actuator and the valve, and to adjust the valve setting to compensate for the pressure change (Abstract; col 16, lines 14-42; col 17, line 63 – col 19, line 61) (*see statements of intended use below*).

Regarding claim 3-9, Sakai et al disclose the electronic control and the hydraulic line capable to perform the functions as claimed based on their intended use language (Abstract; col 16, lines 14-42; col 17, line 63 – col 19, line 61) (*see statements of intended use below*).

5. Claims 13-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sakai et al.

Regarding claim 13, Sakai et al do not disclose the filters as claimed. However, such filters are well known in the art for filtering out unwanted data / signals to produce more accurate output results (support for the well known filters can be found in US 6,629,025). Thus, it would have been obvious to incorporate well known filters in Sakai et al to filter unwanted noises from the incoming data / signals and combine the output to produce a more accurate result.

6. While patent drawings are not drawn to scale, relationships clearly shown in the drawings of a reference patent cannot be disregarded in determining the patentability of claims. See In re Mraz, 59 CCPA 866, 455 F.2d 1069, 173 USPQ 25 (1972).

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7. The statements of intended use or field of use (i.e. claim 1 – which transmits, which applies, which determines, which sets, serves; claim 3 – calculates; claim 5 – determines; claims 6, 8 – takes; claim 7 – incorporates; claim 9 – take) are essentially method limitations or statements of intended or desired use. Thus, these claims as well as other statements of intended use do not serve to patentably distinguish the claimed structure over that of the reference.

See MPEP § 2114 which states:

A claim containing a “recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from the prior art apparatus” if the prior art apparatus teaches all the structural limitations of the claim.

Claims directed to apparatus must be distinguished from the prior art in terms of structure rather than functions.

Apparatus claims cover what a device is not what a device does.

As set forth in MPEP § 2115, a recitation in a claim to the material or article worked upon does not serve to limit an apparatus claim.

### ***Response to Arguments***

8. Applicant's arguments filed 05/12/2010 have been fully considered but they are not persuasive.

**Applicant argues that the prior art does not teach an electronic control as claimed.**

Examiner respectfully disagrees because as stated in section 7 above, the claims are replete with the statements of intended use or field of use. Thus, these claims do not serve to patentably distinguish the claimed structure over that of the reference. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed

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invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

Applicant is suggested to amend the claims with language such as “arranged to” or “configured to” for positively reciting the claimed invention and for distinguishing the claimed invention from the prior art in terms of structure. However, such amendment to claims, if overcoming the prior arts, would require further consideration and/or search from the Examiner in order to determine the patentability of the claimed invention.

### ***Conclusion***

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

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11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Chuong P. Nguyen whose telephone number is 571-272-3445.

The examiner can normally be reached on M-F, 8:00 - 5:00 PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jack Keith can be reached on 571-272-6878. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

CN

/JACK KEITH/  
Supervisory Patent Examiner, Art Unit 3663